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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Billed Party Preference  
for 0+ InterLATA Calls

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CC Docket No. 92-77  
Phase I

COMMENTS OF INTELICALL, INC.

INTELICALL, INC.

Judith St. Ledger-Roty  
Michael R. Wack  
REED SMITH SHAW & McCLAY  
1200 18th Street, NW  
Washington, D.C. 20036  
(202) 457-6100

Its Attorneys

December 14, 1992

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### SUMMARY

Transfer services are a reasonable and workable means of mitigating the consumer and competitive harm resulting from AT&T's unsolicited and misleading marketing of CIID cards to millions of consumers. Since this AT&T-generated harm will continue to burden consumers and competitors on an on-going basis, the Commission must require AT&T to enter into transfer service agreements with OSPs that choose to make such services available. This requirement is an entirely equitable response to AT&T's conduct, and will further the Commission's off-stated goal of promoting a consumer-oriented, user-friendly operator service marketplace.

Local exchange carrier ("LEC") operator transfer services are an appropriate reference point for resolving certain issues regarding transfer services. For example, certain transfer service descriptions can be modeled on language in LEC tariffs. Moreover, OSPs should be compensated for each transfer attempt, as many LECs are today. The Commission should not require OSPs to tariff their transfer services, although they should be free to do so.

The Commission should facilitate OSP/AT&T negotiations by publicly stating AT&T's obligation to enter into transfer service agreements with other OSPs. The Commission also should make its staff available, as necessary, to informally mediate disputes, should they arise. In the late 1980s, the Commission used essentially similar procedures to successfully facilitate cellular interconnection negotiations.

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COMMENTS OF INTELICALL, INC.

Intellicall, Inc. ("Intellicall"), by its attorneys, hereby responds to the November 1992 order ("November Order") in this docket concerning the consumer and competitive harm caused by the use of AT&T CIID cards with the 0+ form of access.<sup>1/</sup> In that order, the Commission requested comment on methods of compensating operator service providers ("OSPs") who receive 0+ dialed proprietary card calls and wish to transfer those calls to the card issuer for completion. November Order at ¶¶ 2 & 64.

Transfer services are a reasonable and workable means of mitigating the harm resulting from AT&T's unsolicited and misleading marketing of CIID cards to millions of consumers. Since this AT&T-generated harm will continue to burden consumers and competitors on an on-going basis, the Commission must require AT&T to enter into transfer service agreements with OSPs that choose to make such services available. This requirement is an entirely equitable response to AT&T's conduct, and will further the Commission's off-stated goal of promoting a consumer-oriented, user-friendly operator service marketplace.

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<sup>1/</sup> See Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, Phase I, FCC 92-465, released Nov. 6, 1992.

The Commission already has demonstrated its approval of operator transfer services by partially waiving its access charge rules to enable local exchange carriers ("LEC") to tariff such services. OSP networks and operating environments differ too significantly from those of the LECs to enable the latter's tariffs to be a rigid model for OSP transfer services. In particular, there may be no need to mandate tariffing of OSP services. Instead, negotiated agreements between OSPs and AT&T should be encouraged. LEC tariffs, however, can serve as a point of reference for resolving certain issues in the instant proceeding. Certain service definitions can be drawn from LEC tariffs, and OSPs, like the LECs, should be compensated for each transfer attempt.

Consumers will derive maximum benefit from OSP transfer services by making those services available sooner rather than later. The Commission can help ensure this result by issuing a declaration of support for such deployment that resolves certain fundamental issues in this proceeding. In the late 1980s, the Commission used an essentially similar procedure to encourage negotiated cellular interconnection agreements. Through policy statements and the judicious use of staff as informal arbitrators, the Commission was able to facilitate cellular interconnection agreements relatively quickly, thereby averting litigation and the need for a prolonged rulemaking. These beneficial results can be obtained by following this procedural approach in the OSP transfer tariff context, which involves far fewer parties and issues.

I. ENCOURAGING DEPLOYMENT OF OSP TRANSFER SERVICES  
WILL MITIGATE CONSUMER AND COMPETITIVE HARM CAUSED  
BY AT&T'S DECEPTIVE CIID CARD MARKETING PRACTICES

The Commission's "paramount" consideration when addressing operator services issues is the promotion of consumer welfare. <sup>2/</sup> The Commission has not hesitated to require OSPs and aggregators to modify their operations and expend significant monetary resources when the Commission perceived that such activities would promote consumer choice and dialing convenience. In keeping with this precedent, the Commission should take steps to facilitate the deployment of OSP transfer services.

The need for such Commission action is straightforward. AT&T's CIID card marketing practices have worked a fundamental change in the operator services marketplace. The Commission recently found that such practices "have persuaded many consumers to unnecessarily destroy or discard otherwise valid calling cards" that could be used to complete 0+ calls at any location, leaving them with CIID cards that are certain to permit call completion only at locations where AT&T is the presubscribed OSP. <sup>3/</sup> The

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<sup>2/</sup> See, November Order at ¶ 2; accord, Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report at Order, 6 FCC Rcd 4736, 4739; Notice of Proposed Rulemaking, 6 FCC Rcd 1448, 1452 (1991); Billed Party Preference for 0+ InterLATA Calls, Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 92-169, released May 8, 1992, at ¶¶ 18 & 31 (1992).

<sup>3/</sup> See Letter To AT&T Chairman Robert E. Allen, adopted Nov. 3, 1992, By Direction of the Commission, FCC 92-490, at 1-2 ("Letter of Admonishment"). Implementation of 10XXX unblocking at many aggregator locations is not required until as late as March 1997. See 47 C.F.R. § 64.704(c)(5).

Commission concluded that AT&T's proffered explanation of its practices was "seriously lacking" and had "no plausible basis."

Id.

The Commission also determined that AT&T's actions have caused "widespread consumer confusion and dissatisfaction." Id.

at 2. In the November Order, the Commission succinctly summarized how such harm is manifest in the marketplace:

Because AT&T instructs its cardholders to dial 0 plus the receiving number, without first ascertaining whether AT&T is the presubscribed carrier for that line, its competitors are forced to devote their facilities to uncompleteable and therefore unbillable CIID card calls. Thus, the costs incurred in processing such calls cannot be recovered from those causing the costs to be incurred. Customers are understandable frustrated when their calls, placed in accordance with the dialing instructions AT&T provides for its CIID cards, cannot be completed as dialed. AT&T's competitors' inability to process CIID cards calls has caused this customer frustration to be misdirected at the OSP. It then may be communicated to the aggregators, and result in a loss of customer good will for the OSP. 4/

To offset these consumer and competitive harms, AT&T has been ordered to "reeducate" CIID card holders. 5/ This forthcoming reeducation program is not certain to have an immediate effect on consumer dialing practices. The harm caused by AT&T results from several years of concerted CIID card marketing effort. There is no reason to believe that the consumer dialing habits ingrained by this marketing are as pliable and subject to rapid change as the November Order envisions. Therefore, it is unreasonable to

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4/ November Order at ¶ 25 (footnote omitted).

5/ Id. at ¶ 2. AT&T also has been ordered to make its 800 access number easier to use. Id.

expect instantaneous results from AT&T's reeducation program, no matter how extensive and well-intentioned it may be. 6/

Moreover, even if that program ultimately "works" as the Commission intends, that will not correct the structural change AT&T's unreasonable marketing practices have already produced in the 0+ market. No reeducation program will bring back the line number cards that AT&T duped consumers into destroying. Nor do the parties who initially issued those cards (AT&T and the BOCs) have any incentive to reissue them. AT&T is committed to its CIID card program, and it has co-opted the BOCs and most other LECs into its marketing strategy by enabling them -- and only them -- to utilize AT&T CIID cards as a means of allowing consumers to pay for LEC-provisioned operator services. Given that these cards will be of limited utility at many locations where AT&T is not the presubscribed OSP, consumers will continue to be inconvenienced by AT&T's past marketing practices for some considerable period of time.

The Commission can greatly assist consumers by encouraging OSPs to deploy transfer services that will enable AT&T CIID card calls to be completed from locations where AT&T is not the pre-subscribed carrier. OSPs other than AT&T need little encouragement to provide such services because they have a strong market incentive to ensure call completion. There is no basis for concluding that AT&T will subscribe to such services without

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6/ In any event, consumers will continue to be confused about CIID card usage at pay phones due to the effects that LATA boundaries and the AT&T/LEC Mutual Honoring Agreements have on such usage.



explicit direction from the Commission. Therefore, the Commission must order AT&T to enter into call transfer agreements with OSPs and compensate them for the benefit AT&T will receive from such services.

Imposing this requirement on AT&T is entirely rational and equitable. The Commission has determined that AT&T's CIID card practices are harming consumers, burdening OSPs with needless costs and disrupting 0+ market competition. AT&T has been officially admonished for engaging in such practices, ordered to stop them and to take corrective action. Consumers will benefit directly and immediately from the provisioning of transfer services. Under these circumstances, the successful deployment of these consumer-oriented services cannot be made dependent on AT&T's sufferance.

## II. CALL TRANSFER ISSUES

The Commission is not required to develop transfer tariff policies and guidelines from ground zero. Basic policies and guidelines already exist as a result of the Commission's review of LEC transfer tariffs. Since these tariffs have been reviewed and allowed to take effect, <sup>7/</sup> they may be considered presumptively lawful and can serve as models for similar OSP services. Furthermore, it is Intellicall's understanding that AT&T subscribes to all the LEC tariffs. Thus, since both the Commission and AT&T are

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<sup>7/</sup> See, e.g., Ameritech Operating Companies, Transmittal Nos. 425, 467, DA 91-274, released Mar. 5, 1991 (Com.Car.Bur.) ("Ameritech Call Transfer Order"); Southwestern Bell Telephone Companies, 5 FCC Rcd 3452 (1990) (Com.Car.Bur.) ("SWB Call Transfer Order").

comfortable with these tariffs, there is no basis for AT&T to object to being ordered to enter into similar service arrangements with OSPs.

LEC networks and market environments differ significantly from those of OSPs, so it is not possible to rigidly apply every aspect of the LECs' tariff to the OSP context. However, these tariffs are a ready point of reference that can help resolve some of the key issues identified in the November Order and at the December 8, 1992 open meeting on transfer services that was conducted by FCC staff.

#### 1. Definition of Transfer Service

Should the Commission decide that it needs to adopt a working definition of the term "transfer service," Intellicall recommends that any such definition be broad and technologically neutral. The rationale for this suggestion is straightforward. While there are numerous methods of redirecting a caller from one carrier's network to another, individual OSP networks are not necessarily equipped to provide all of them. Defining "transfer service" too narrowly may unintentionally preclude certain OSPs from providing a means of directing AT&T CIID card users to that carrier. A definition that contains overly technical terms may produce a similar result.

To avoid these problems, Intellicall recommends the following definition: "0+ transfer is a service that provides call routing of 0+ calls to an operator service provider as requested by the calling end user." This definition is based on one of the many LEC transfer service descriptions on file at the Commission. See

SWB Tariff F.C.C. No. 73, Section 16.2.1. It emphasizes the nature of the service rather than the technical means of provisioning it. The reference in the definition to customer requests is in keeping with the Commission's goal of promoting consumer choice in the 0+ marketplace, and the definition as a whole appears broad enough to encompass all of the primary call transfer methods suggested in the record thus far (e.g., automatic redialing, call reorigination, splashing with the caller's consent).

Of course, the Commission should avoid defining the term "transfer service" so broadly that it becomes meaningless. For this reason, Intellicall followed the LECs' example and included in its definition the notion that "call routing" by the transferring carrier is a component of a transfer service. Intellicall strongly opposes AT&T's suggestion that the term "transfer service" is so broad as to encompass merely giving an end-user instructions on how to reach AT&T by dialing an access code. <sup>8/</sup> No "transfer" of a call is involved under AT&T's suggestion. Moreover, requiring OSPs to provide such instructions merely turns them into marketing agents for AT&T. This result is directly contrary to the Commission's goal of promoting a competitive operator services marketplace. <sup>9/</sup>

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<sup>8/</sup> See AT&T, memorandum of ex parte presentation, CC Docket No. 92-77, filed December 2, 1992.

<sup>9/</sup> Although OSPs should not be required to enter into "dialing instruction" agreements with AT&T, individual OSPs should be free to enter into such marketing agreements, if they so choose.

## 2. Voluntary vs. Mandatory Service

As discussed previously, AT&T should be required to enter into reasonable transfer agreements with other OSPs because its CIID card marketing practices are generating unrecoverable costs for those OSPs. It does not follow, however, that all OSPs should be required to enter into such agreements with AT&T (or any other carrier). OSPs other than AT&T have not done anything to warrant having such an obligation placed on them by the Commission. For similar reasons, the Commission should not preclude OSPs from receiving compensation for a call transfer service in instances where an OSP attempts to market its own service before initiating the transfer.

## 3. Compensation For Call Attempts vs. Call Completions

OSPs should be compensated for each transfer attempt. Compensation per-attempt is required in many LEC call transfer tariffs, and there is no reason why OSPs should be precluded from provisioning transfer services the same way. In fact, there is no basis for requiring compensation only for completed calls. As a technical matter, LECs and OSPs can only route a call to AT&T's network. Once that routing is initiated, the "transfer service" is accomplished in full.

Moreover, OSPs and LECs cannot require or even influence the operation of AT&T's network once a call is handed off -- AT&T alone controls whether the call goes forward at that point. There is no reason why OSP (or LEC) transfer compensation should depend on something over which they have no control.

#### 4. Call Transfer Auditing/Verification

It has been suggested that it will be difficult to audit and verify OSP bills for transfer services, and that such difficulty presents a reason not to order AT&T to enter into such agreements. Arguments of this nature are a red herring. The Commission already has rejected them in a previous proceeding, where it found that PPTOs and IXC's were perfectly capable of resolving audit/verification issues once they were ordered to enter into dial-around compensation agreements.<sup>10/</sup> As the Commission recognized, audit/verification procedures are provided for routinely in business agreements, including contracts for common carrier services. Given the prevalence of these procedures and contract terms, there is no reason to think that auditing or verification present a barrier to OSP/AT&T transfer service agreements.

#### 5. Contracts vs. Tariffs

The Commission should not require OSPs to tariff their transfer services, although OSPs should be free to do so. The factors that have prompted the LECs to tariff such services, including their relationship to the LECs' access charges, generally do not apply to OSPs. Thus, OSPs should be free to provide transfer services on a contract basis. If the Commission chooses, it could order such contracts to be filed at the Commission pursuant to section 211 of the Act, 47 U.S.C. 211. Since it

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<sup>10/</sup> See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Second Report and Order, 7 FCC Rcd 3251 at ¶¶ 49-54 (1992).

is possible that contracts of this nature will contain commercially sensitive information, the Commission would be better advised to require only summaries of the contracts to be filed. This is essentially the same procedure the Commission imposed on AT&T in the CC Docket No. 90-132 interexchange regulatory reform proceeding.

### III. PROCEDURAL ISSUES

Call transfer agreements will benefit the public to the greatest extent if they are made available in short order. Given the potentially wide variety of OSP network designs and equipment capabilities, however, rapid development of a single call transfer model may be difficult to achieve in a rulemaking context. Thus, the Commission should consider taking steps in the interim to facilitate negotiations between OSPs and AT&T regarding service provisioning on a contract basis.

Toward this end, the Commission should consider following the procedures it used successfully to establish interconnection agreements between cellular carriers and landline local exchange carriers ("LEC").<sup>11/</sup> There, the Commission prescribed baseline interconnection guidelines, imposed a requirement that both sides negotiate in good faith, and made Commission staff available at the request of either side to informally arbitrate disputes. Id. Once the Commission's willingness to facilitate negotiations was

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<sup>11/</sup> See The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910 (1987); on reconsideration, 4 FCC Rcd 2369 (1989).

made clear, cellular interconnection agreements generally were obtained without the need for tariffing or litigation.

Such an approach will yield similarly beneficial results if followed in the instant context. Moreover, there is every reason to believe these results can be achieved far more rapidly in the OSP context than they were in cellular, or several reasons. First, the potential number of parties to the contractual agreements that would need to be negotiated in the OSP context is far smaller than was needed in cellular. Second, the different types of available OSP transfer methods are the subject of well developed records in various Commission proceedings.<sup>12/</sup> Thus, it should not be difficult for the Commission to make some general conclusions about which methods best serve the public interest goals of this proceeding.

Against this background, Intellicall recommends that the Commission quickly issue guidelines to the industry that are designed to set the stage for rapid completion of negotiations between OSPs and AT&T regarding transfer services. Such guidelines should: (1) underscore AT&T's obligation to enter into reasonable call transfer agreements with OSPs (or subscribe to similar OSP tariffed services); (2) identify existing LEC 0+ transfer services

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<sup>12/</sup> The record of Commission's initial OSP rulemaking proceeding contains numerous material of this nature. E.g., Comments of the Public Telecommunications Council, CC Docket No. 90-313, filed Sept. 7, 1990 (public and private pay telephone redialing and reorigination capabilities); Report of the Call Splashing Task Force (June 1, 1989). Network-based OSPs also appear to be in general agreement about available call transfer methods. See Competitive Telecommunications Association, memorandum of ex parte presentation, CC Docket No. 92-77, filed Dec. 2, 1992.

as appropriate models for OSP/AT&T transfer agreements/tariffs;  
(3) encourage contractual agreements rather than tariffs in order to facilitate rapid delivery of call transfer capabilities to the public and reduce burdens on the Commission; and (4) offer to make Commission staff available to informally facilitate negotiations. Issuing these guidelines would greatly facilitate the achievement of reasonable transfer agreement and, thereby, further the public interest. Moreover, promulgating guidelines would not preclude the Commission from continuing to develop more detailed transfer services policies in the instant rulemaking proceeding.

#### IV. CONCLUSION

Intellicall supports the Commission's efforts to ensure that transfer services are widely available to consumers. Intellicall urges the Commission to continue such efforts in keeping with the suggestions offered in these comments.

RESPECTFULLY SUBMITTED

INTELLICALL, INC.

By: 

Judith St. Ledger-Roty  
Michael R. Wack  
REED SMITH SHAW & McCLAY  
1200 18th Street, NW  
Washington, D.C. 20036  
(202) 457-6100

Its Attorneys

December 14, 1992



CERTIFICATE OF SERVICE

I, Courtenay P. Adams, hereby certify that a copy of the foregoing "Comments of Intellicall, Inc.," were sent, by U.S. mail, first class, postage prepaid, this 14th day of December 1992, to the following individuals:

Gregory J. Vogt, Chief\*  
Tariff Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 518  
Washington, D.C. 20554

Colleen Boothby, Associate Chief\*  
Tariff Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 518  
Washington, D.C. 20554

Barbara Esbin\*  
Tariff Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 518  
Washington, D.C. 20554

Cheryl Tritt, Chief\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

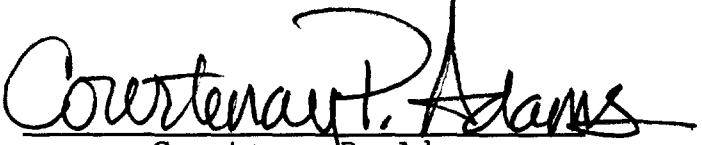
Kathleen Levitz, Deputy Bureau Chief (Policy)\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

Robert L. Castellano  
AT&T  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920

Albert H. Kramer, Esquire  
Keck, Mahin & Cate  
1201 New York Avenue, N.W.  
Penthouse  
Washington, D.C. 20005-3919  
Attorney for APCC

Genevieve Morelli, Esquire  
General Counsel  
Competitive Telecommunications Association  
1140 Connecticut Avenue, N.W., Suite 220  
Washington, D.C. 20036

Randolph J. May, Esquire  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404

  
Courtenay P. Adams